

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19720
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

This case arises from a timely protest of a State Tax Commission staff decision to deny the property tax reduction benefit for 2006. This matter was submitted for decision based on the documents in the file. The State Tax Commission has reviewed the file and makes its decision thereon.

[Redacted] (petitioners) filed a property tax reduction benefit application on April 7, 2006. Idaho Code § 63-707(5) provides for the State Tax Commission to review applications the petitioners submit to their county assessors. When the staff examined the petitioners' application and records available to the State Tax Commission, it did not appear the petitioners were Idaho residents.

The staff sent a letter to the petitioners advising them of the intent to deny them the 2006 benefit. They responded by sending a letter appealing that determination. The petitioners' appeal file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-701 uses definitions to describe the conditions that must exist for an applicant to qualify to receive the property tax reduction benefit. The Code states in pertinent part:

- (2) **"Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant** and may be occupied by any members of the household as their home, and so much of

(3) the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home.

...

(8) (a) **"Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made.** The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. **A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:**

(i) At least six (6) months during the prior year; or

(ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or

(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine. (Emphasis added.)

The burden of proof is on the petitioners to establish by clear and convincing evidence their home in Idaho was their primary dwelling place on January 1, 2006, or before April 15, 2006, and at least six months of 2005.

With their application, the petitioners submitted copies of two checks from the United States Treasury to establish the amount of social security they receive each month. [Redacted] The petitioners submitted a copy of an Idaho driver's license issued [Redacted] on October 4, 2004, and a copy of an Idaho automobile registration issued on April 7, 2006, in the petitioners' name. Both documents show the address as a post office box [Redacted] To receive the benefit, the petitioners must meet one of several conditions in addition to owning the homestead. As the claimants, the petitioners must have actually occupied the property as their primary dwelling place on January 1, 2006, or before April 15, 2006, and for at least six months of 2005, or they must

establish that the dwelling was their primary dwelling place during the prior year by clear and convincing evidence.

During telephone conversations [Redacted], she indicated she would be submitting documentation to establish the home for which the benefit has been applied for was their primary residence. However, nothing was submitted.

[Redacted] asked what would be considered proof that their home in [Redacted], Idaho, is their primary residence for the purpose of this benefit. When it was suggested utility bills could be considered as an indication of residency, she said there are no utility bills because they have no utilities at their place in Idaho. She said they live “rustic” at their home in Idaho.

The Tax Appeals Specialist sent the petitioners a letter advising them of their rights to request a hearing or submit additional information. That letter was returned by the Idaho post office with the same forwarding address [Redacted] that is shown on the petitioners’ social security checks.

The petitioners have sent nothing in support of their argument but an Idaho driver’s license [Redacted] and an Idaho automobile registration. The State Tax Commission is not persuaded the petitioners established that their house in [Redacted], Idaho, was their primary dwelling place by clear and convincing evidence or by actually occupying the property as required by the definition of primary dwelling place--on January 1, 2006, or before April 15, 2006, and for six months during 2005.

Idaho Property Tax Administrative Rule 600 states: “The burden of proof of entitlement to the exemption is on the person claiming exemption for the property.” The petitioners have not met their burden. The petitioners’ application to receive the property tax reduction benefit for 2006 must be denied.

The Tax Commission is aware there is some potential this decision could cause a hardship to the property tax reduction applicant in certain circumstances. The proper jurisdiction to handle such hardship situations falls with the county commissioners.

WHEREFORE, the decision of the State Tax Commission staff to deny the property tax reduction benefit for 2006 is hereby APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the petitioners' right to appeal this decision is included with this decision.

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
